

Court's
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IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

2007 APR 20 A 9:41

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

TRACY J. RICHARD, AIS#185814

Full name and prison number of
plaintiff(s)

v.

CIVIL ACTION NO. 2:07cv 338-WHA
(To be supplied by the Clerk of the
U.S. District Court)

RICHARD ALLEN, COMMISSIONER ALDOC

PAUL WHALEY, DIRECTOR OF CLASSIFICATION ALDOC

Name of person(s) who violated
your constitutional rights.

(List the names of all the persons)

I. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? Yes () No (X)

B. Have you begun other lawsuits in state or federal court relating to your imprisonment? Yes () No (X)

C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit
Plaintiff(s) NON-APPLICABLE

Defendant(s) NON-APPLICABLE

2. Court (if federal court, name the district; if state court, name the county)
NON-APPLICABLE

3. Docket No. _____

4. Name of Judge to whom case was assigned _____

Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)
NON-APPLICABLE

6. Approximate date of filing lawsuit NON-APPLICABLE

7. Approximate date of disposition NON-APPLICABLE

II. PLACE OF PRESENT CONFINEMENT BULLOCK COUNTY CORRECTIONS FACILITY

PLACE OR INSTITUTION WHERE INCIDENT OCCURRED BULLOCK COUNTY CORRECTIONS FACILITY

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

NAME

ADDRESS

1. RICHARD ALLEN 301 S. RIPLEY ST. MONTGOMERY, AL. 36130

2. PAUL WHALEY 301 S. RIPLEY ST. MONTGOMERY, AL. 36130

3. _____

4. _____

5. _____

6. _____

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED FEBRUARY 2, 2006

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: DENIAL OF DUE PROCESS

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place, manner, and person involved).

THE DEFENDANTS ARE RELYING UPON FALSE DETAILS OF AN ALLEDGED OFFENSE OF KIDNAPPING THAT I WAS ACQUITTED OF TO DENY ME ANY LESS RESTRICTED CUSTODY STATUS. THIS INCIDENT OCCURED ON OR ABOUT FEBRUARY 2, 2006 DURING A PROGRESS REVIEW HEARING WITH MY CLASSIFICATION SPECIALIST AND THRU CORRESPONDANCE WITH DEFENDANT PAUL WHALEY.

GROUND TWO: NON-APPLICABLE

SUPPORTING FACTS: _____

GROUND THREE: _____

SUPPORTING FACTS: _____

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU. MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES. TO ISSUE AN ORDER TO THE DEFENDANTS ORDERING THEM TO EXPUNGE THE FALSE INFORMATION OF AN ALLEDGED OFFENSE OF KIDNAPPING FROM MY PRISON FILES OR IN THE ALTERNATIVE, TO NOT USED THESE FALSE ALLEDGED DETAILS TO DENY ME ANY LESS RESTRICTED CUSTODY STATUS.

x Tracy Richard
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on 4-17-07
(date)

x Tracy Richard
Signature of plaintiff(s)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

TRACY J. RICHARD, AIS#185814 *

PETITIONER, *

VS

* CASE NO. _____

RICHARD ALLEN, COMMISSIONER ALDOC *

~~PAUL WHALEY, DIRECTOR OF CLASSIFICATION FOR ALDOC~~
RESPONDENT,

SWORN AFFIDAVIT

I, TRACY J. RICHARD, AIS#185814, the affiant
do swear under oath that the following statement made regarding the
aforementioned case is true and correct to the best of my knowledge
and would so aver that: AT NO TIME TIME DURING THE OFFENSE THAT I
WAS CONVICTED OF DID I ADUCT THE ALLEDGED VITIM AND THIS FACT WAS
PROVEN AT TRIAL. THUS, I WAS ACQUITTED OF THE CHARGE OF KIDNAPPING.

Page TWO OF SWORN AFFIDAVIT.

x Tracy Richard
Signature of Affiant

Sworn to and subscribed to before me
this 17th day of April, 2007.

L. C. Anthony
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr 4, 2011

SEAL

My commission expires _____

MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S COMPLAINT

The Plaintiff, Tracy J. Richard (hereinafter Plaintiff) is serving a fifteen (15) year sentence for the Class A Felony of Burglary 1st. Plaintiff has filed the foregoing Pro-Se 1983 complaint, alleging he was being deprived of due process because details of an alleged offense {Kidnapping} that he was acquitted of was being used to deny him fair consideration for any less restricted custody status.

Alabama Department of Corrections officials exceeded their authority under the classification manual and 5th and 14th Amendment of the United States Constitution, and treated the Plaintiff arbitrarily and capriciously in violation of due process when it relied on false information in his prison file in denying him any less restrictive custody.

The Plaintiff asserts that although the courts have ruled that an inmate does not have a liberty interest in a particular custody or security classification, he has a due process right to be fairly considered. The Defendants reliance on false information in order to deny him any less restrictive custody violates due process. Therefore, he is entitled to have the false and erroneous information deleted from his prison file.

The Plaintiff has a due process right to have prejudicial information deleted from his prison files because the following facts can be proven.

- (1). Specific information exist in his file.

(2).The information is false.

(3).The information has been relied upon to a constitutionally significant degree.

In conclusion although the classification manual is framed in discretionary terms it created a legitimate expectation of or entitlement to the lowest placement {custody or security classification} possible and should not be denied for false, erroneous, insufficient, or capricious reasons. The classification manual created an expectancy of being placed in the lowest custody, or security classification sufficient to trigger the protection of the due process clause.

Thus, the Plaintiff is entitled to have this court to enter an ORDER requiring the Defendants to expunge the false information from his prison record.

Respectfully Submitted,

x Tracy Richard

Tracy J. Richard# 185814

Bullock Correctional Fac.

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Union Springs, AL.
36089

Legal
Mail

"John, Clerk of The Court :
Middle District of ALABAMA
United States Courthouse
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15th Ave Street
Montgomery, AL 36104

